

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1220 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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BABUBHAI GULABBHAI CHAVDA

Versus

SHANTILAL RATILAL  
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Appearance:

MR SURESH M SHAH for Petitioner  
MR SK BUKHARI for Respondent No. 1  
NOTICE UNSERVED for Respondent No. 2  
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 14/03/2000

ORAL JUDGEMENT

1. The present revision application has been filed by the original defendant No.2 against whom as well as against the respondent No.2 herein. The respondent

No.1-Shantilal Ratilal had filed the suit being H.R.P.Civil Suit No.3179/73 in the Small Causes Court, Ahmedabad. The case of the plaintiff in the said suit was that the suit property situated in Shahpur Ward-2A was of the ownership of the plaintiff's father. That in the year 1960 the plaintiff had constructed new building from foundation and thereafter, there was a partition of the suit property and the present premises came to the share of the present plaintiff. Since September, 1968 the plaintiff has become the owner of the suit property. That out of this property, one shop on the ground floor alongwith cellar having Municipal Census No.1133 was given to the defendant No.1 for the purpose of his business of repairing and selling the radios. The aforesaid premises was taken by the defendant No.1 from the father of the plaintiff in December, 1965 and he had executed the rent note to that effect on 7.2.1966. The defendant No.1 also accepted the plaintiff as the owner and started paying rent to him. However, he was in arrears of rent from 1.1.1972 and he had also not paid municipal taxes. The defendant No.1 also without the consent of the plaintiff had sublet the suit premises to the defendant No.2, and therefore, the notice was issued on 10.3.1973 to the defendant No.1, but he did not give any reply nor paid any rent in response to the same. Ultimately, therefore, the suit for possession on the ground of subletting as well as on the ground of arrears of rent was filed by the plaintiff against the defendant No.1 and No.2.

2. The defendant No.1 even though served with the summon did not appear in the suit and accordingly the suit proceeded ex-parte against him. So far as the defendant No.2 is concerned, he appeared in the suit and filed his written statement at Exh.17. It was stated that Rs.70/- is excessive rent. That summon of the suit is not legally served on the defendant No.1 and that the defendant No.1 has left Ahmedabad for ever and his whereabouts is not known. On this and such other grounds, the aforesaid suit was resisted by defendant No.2.

3. Learned trial Judge framed various issues at Exh.30 and thereafter after recording the evidence of the plaintiff and the defendant No.2 decreed the suit. The trial court decreed the suit for possession and the defendant No.1 was ordered to pay arrears of rent to the tune of Rs.1120/-. The aforesaid decree of the trial court was challenged by the original defendant No.2 by filing Civil Appeal No.81/79 before the Appellate Bench of the Small Causes Court, Ahmedabad. So far as the

original tenant, that is, defendant No.1 is concerned, he had not challenged the decree of the trial court and as per the record of the trial court, he was shown to have been served. So far as the aforesaid appeal of the original defendant No.2 who is present petitioner herein is concerned, the appellate bench of the Small Causes Court, Ahmedabad dismissed the said appeal and confirmed the decree of the trial court. The aforesaid order of the appellate court is under challenge at the instance of the original defendant No.2 by way of present revision application.

4. In the revision application, Mr.S.K.Bukhari, learned advocate appears for the original landlord, that is, respondent No.1 herein. So far as the respondent No.2 is concerned, as per the endorsement he is not served. However, the respondent No.2 who was the defendant No.1 in the suit had not challenged the decree of the trial court by preferring any appeal, and therefore, real contest in the revision application is between the defendant No.2, that is, the petitioner herein and the respondent No.1 - original plaintiff because so far as the defendant No.1 is concerned, he has accepted the decree of the trial court as having not filed any appeal against the decree of the trial court against him. At the time of hearing of this revision application, it was argued by Mr.S.M.Shah, learned advocate for the petitioner - original defendant No.2 that the defendant No.2 is doing the business in the suit premises as a partner of the defendant No.1, and therefore, there was no subletting. According to him, the courts below have committed an error in appreciating the evidence by coming to the conclusion that there was subletting by defendant No.1 to the defendant No.2. At this stage, it is necessary to mention that, so far as the defendant No.1 is concerned, the suit premises was let out to him and he was the head tenant. As per the endorsement, he was served in the trial court in the suit, but he had not appeared and the suit was ordered to be proceeded ex-parte against him. Not only that, when the present petitioner had filed the appeal before the Appellate Bench of the Small Causes Court, Ahmedabad, the notice of the aforesaid proceedings was also published in the Times of India, Bombay Edition dated 13.10.1979, because at that time, according to the plaintiff, he was residing at Bombay. The defendant No.1 had not appeared in the appeal also. The defendant No.2 had stated in his written statement that the defendant No.1 has left the premises since long and that his whereabouts are not known. Keeping the aforesaid aspect in mind, if so called partnership deed is examined, it is clear that,

the aforesaid document is nothing but creating sub-tenancy by the defendant No.1 in favour of the defendant No.2. As per the partnership document at Exh.66, the defendant No.2 was to pay fix amount of Rs.150/- to the defendant No.1 every month. Looking to the said document, it is clear that, the defendant No.1 has not got any control over the suit property and he left the suit property handing over the same exclusively to the defendant No.2. The defendant No.1, therefore, has never bothered about the suit property or there is nothing on record to show that, he had ever tried to take part in the business of the defendant No.2. In that view of the matter, it is clear that, the defendant No.1 has parted with the suit property in favour of the defendant No.2 and accordingly has committed an act of subletting. Mr.S.M.Shah, learned advocate for the petitioner has relied upon one letter dated 26.12.1979 which is produced at Annexure-N with the revision memo. According to Mr.Shah the said letter has been written by one De Silva from Srilanka on 26.12.1979 wherein reference about the partnership by the defendant No.1 with the defendant No.2 is mentioned. No reliance can be placed on such letter.

5. It is argued by other side that this letter is a got up letter by the defendant No.1. In any case, looking to the evidence on record, it is clear that the defendant No.1 has left the suit premises for ever handing over the same to the defendant No.2. It is, therefore, clear cut case of subletting. In that view of the matter, though the defendant No.2 is in possession of the suit premises, he has failed to show that, he was having any legal right, title or interest in the suit property and both the courts have rightly found that the defendant No.1 has illegally sublet the suit premises to the defendant No.2. That being a clear finding of fact and which is also based on the evidence on record cannot be disturbed by this court, unless it is found to be perverse or unreasonable. Very cogent reasons have been given by the appellate court regarding subletting in para 12 of its judgment. In that view of the matter, I do not find any substance in this revision application. It was also found by the courts below that the defendant No.1 had not paid even the arrears of rent as demanded in the suit notice, and therefore, it was rightly found that the defendant No.1 was in arrears of rent and even on that ground also, he was liable to be evicted under Section 12(3)(a) of the Rent Act having failed to pay the arrears of rent within one month from the receipt of the suit notice.

6. On the aforesaid grounds, this revision

application is required to be dismissed, and is, accordingly dismissed. Rule is discharged with no order as to costs.

7. At this stage, Mr.S.M.Shah, learned advocate for the petitioner requested that, since the present petitioner is doing his business since long, he may be given reasonable time to vacate the suit premises. In the facts and circumstances of the case and in view of the fact that, since last many years the petitioner is doing his business in the suit premises, I direct that the decree for possession shall not be executed till 31.12.2001. The aforesaid time is given to the present petitioner to vacate the suit premises on the condition that, he shall file usual undertaking before this court within a period of six weeks from today. In the said undertaking, the petitioner should clearly mention that, he is in exclusive possession of the suit premises. That, he has no right, title or interest in the suit property in any manner and that, he will hand over the peaceful vacant possession of the suit property to the respondent No.1 - landlord on or before the aforesaid date. If, the aforesaid undertaking is not filed within the stipulated period or if, there is any breach of the said undertaking lateron, it will be open for the respondent No.1 - landlord to execute the decree for possession forthwith. The petitioner should also pay the means profits regularly every month till he vacates the suit premises.

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